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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,317	02/11/2004	Charles Lepage	086089-9059-02	4104
23409	7590	02/16/2006		
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			EXAMINER PAHNG, JASON Y	
			ART UNIT 3725	PAPER NUMBER
DATE MAILED: 02/16/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/776,317

Applicant(s)

LEPAGE ET AL.

Examiner

Jason Y. Pahng

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 2, 2006 has been entered.

### ***Specification***

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

For example, the following title is suggested: "Bale Processor with a Fork Lift."

### ***Claim Objections***

Claim 4 is objected to because of the following informalities: It appears that the phrase "chassis each fork" in line 8 should be "chassis with each fork."

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3725

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hruska (US 6,199,781) in view of Raben (US 5,562,392). Hruska discloses substantially all of the claimed structure including:

1. a chassis (101) having a front (102) and back end and a left and right side;
2. a bale receptacle (1) mounted on the chassis (101);
4. a disintegrator (20) mounted in the bale receptacle (1) adapted to disintegrate baled crop material and to discharge processed material out of the bale receptacle (1);
5. a fork lift (50; Figure 2) mounted toward the back end of the chassis (101) having a fork lift frame pivotally connected to the chassis (101) and forks on the fork lift frame extending rearward of the chassis (101) with each fork having a free end distal from the chassis (101);
6. a hydraulic cylinder (51) connected between the fork lift frame and the chassis (101) adapted to pivot the fork lift frame between a first position near ground and a second position above the receptacle (1); and
7. the fork lift (50) is adapted to retain the bales as the fork lift frame is pivoted between the first and second positions and to release the bale into the receptacle.

Hruska's bale carrying fork lift does not have a material carrier extending inwardly towards the opposing forks. In a closely related fork lift art, Raben discloses a fork lift

with a material carrier extending inwardly towards the opposing forks (216) in order to prevent material to pass between the forks. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Hruska with a fork lift with a material carrier extending inwardly towards the opposing forks in order to prevent material to pass between the forks, as taught by Raben.

With regard to claim 5, Raben's material carrier is already attached to a bottom surface of the respective forks (Figure 10).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hruska (US 6,199,781) in view of Raben (US 5,562,392), further in view of Chain et al. (US 4,325,666). Hruska (as modified) discloses a bale carrier, but it does not comprise rods with three sections each tapering inwardly, extending forwardly, and tapering outwardly. Such rod carriers to provide a large area of added support to hold bale is well known in the art. In a closely related art, Chain discloses rod bale carriers with three sections (252, 264; Figures 2 and 3) each tapering inwardly, extending forwardly, and tapering outwardly in order to provide a large area of added support to hold bale. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Hruska (as modified) with a rod bale carriers with three sections each tapering inwardly, extending forwardly, and tapering outwardly in order to provide a large area of added support, as taught by Chain.

Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hruska (US 6,199,781) in view of Raben (US 5,562,392), further in view of Sanderson (US 4,938,652) and Ronnblom (US 5,338,148). Claims 7-11 call for the distance

between the respective forks and the length of each fork to be adjustable. A fork lift with a variety of adjustable feature is routine and well known in the art. In a closely related fork lift art, Sanderson discloses a fork lift which is adjustable in length and Ronnblom discloses a fork lift which is adjustable in separating distance (Figure 6) in order to help lift material of different configurations. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Hruska (as modified) with a fork lift with routine features, including a fork lift which is adjustable in length and adjustable in separating distance, in order to lift material of different configurations, as taught by Sanderson and Ronnblom.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hruska (US 6,199,781) in view of Raben (US 5,562,392), further in view of Hedgespeth (US 4,348,143). Claim 12 calls for a bale spear. In a closely related art, Hedgespeth discloses a bale lifter with a bale spear (22) in order to provide additional holding. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Hruska (as modified) with a bale spear in order to provide additional holding, as taught by Hedgespeth.

### ***Response to Arguments***

Applicant's arguments filed February 2, 2006 have been fully considered but they are not persuasive. However, in view of Applicant's arguments, claim 6 would be allowable if rewritten in independent form including all of the limitations of the base claim and also include all of the limitations of claim 11.

Applicant argues that “none of the prior art discloses a bale carrier” in page 4. This is not true. Hruska discloses a bale carrier with a fork lift.

With regard to Chain, Applicant argues that Chain does not teach “the use of bale carrier elements at all” in page 4. This is not true. Chain discloses use of bale carrier elements (252, 256) which assist in retaining a bale loaded in the back of a pickup.

With regard to the combination of Hruska and Raben, Applicant argues that Raben does not disclose a “fork lift” in page 5. However, Raben is not relied upon to disclose a fork lift because Hruska discloses a fork lift for bale.

With regard to the argument that Raben is a non-analogous reference because it is not reasonably pertinent to the particular problem with which the applicant was concerned. Applicant argues that Raben is not related to flipping baled material into a bale processor. However, Raben is not relied upon to disclose flipping baled material into a bale processor because Hruska discloses flipping baled material into a bale processor. Raben is relied to solve the particular problem of material falling between the forks. Raben teaches that adding a material carrier extending inwardly helps to give extra support to prevent material from falling between the forks.

Finally, Applicant argues that there is nothing to support a reasonable likelihood of success in modification of Hruska by Raben to arrive at Applicant's claimed invention. However, Hruska's fork lift can easily be modified to add some kind of a material carrier extending inwardly as taught by Raben. There is no structure which gets in the way. There is no unobvious step to be taken. Note that Raben is not relied upon to add a

complicated clamping system to Hruska. Raben is only relied upon for the teaching of adding some kind of a material carrier extending inwardly.

### ***Conclusion***

This is a continuation of applicant's earlier Application No. 10/776,317. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Y. Pahng whose telephone number is 571 272 4522. The examiner can normally be reached on 9:00 AM - 7:00 PM, Monday-Thursday.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571 272 4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JYP

  
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